



# Search and Seizure in the Schools

**Indiana Close Up  
A Jefferson Meeting  
on the Indiana Constitution**



Issue Book Number 1



## Thank you

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**The Jefferson Meeting format requires analysis, critical thinking, public speaking, and cooperative work by participants no matter their level of ability. The Meeting links the Constitution with issues currently in the spotlight and has been called a history lesson with a focus on the present and a civics lesson with historical perspective.**

**The Jefferson Foundation is located at 1529 18th Street, N.W., Washington, D.C. 20036; telephone 202-234-3688.**

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## Availability

Copies of this publication are available from the Indiana Historical Bureau, 140 North Senate Avenue, Room 408, Indianapolis, Indiana 46204-2296. Call for details: 317-232-2535/TDD 317-232-7763/FAX 317-232-3728.

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## Disclaimer

This issue essay should be used as an educational aid to encourage discussion and study. It is not a complete revelation of the current law. The legal issues referred to are far more complex than we are able to address in this format.

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The provision of the Indiana and United States Bills of Rights against unreasonable search or seizure should apply to students in school.

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## The Issue

- Constitution of Indiana

Article I, Section 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

- United States Constitution

Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## Relevant Constitutional References

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The U.S. Constitution was ratified in 1787. The first ten amendments, called the Bill of Rights, were ratified in 1791. Most of the original thirteen colonies had bills of rights with their constitutions when they formed the Union. Each new state which entered the Union had a constitution. Indiana's original 1816 constitution included a Bill of Rights of 24 sections in Article I. The 1851 Indiana constitution contains 37 sections in Article I, known as the Bill of Rights, and gives more rights to citizens than the federal Bill of Rights.

## Historical Context

The rights enshrined in the U.S. Bill of Rights are considered so fundamental, nearly sacred, that they were spelled out as protections to citizens from encroachment by the federal government. State constitutions likewise protected the rights of citizens from encroachment by state government.

The rights enumerated in the U.S. Bill of Rights are connected by the thread of "natural rights" to Roman times. The concept of "natural rights" assumes that all humans are born with certain rights that cannot be transferred or taken away.

Some of these rights are specified in the Magna Carta in 1215 A.D., the English Bill of Rights in 1689, and the United States Declaration of Independence, Constitution, and Bill of Rights.

What does this mean for us today as we discuss the application of freedom from unreasonable search and seizure as it pertains to students in schools? How and whether these rights apply to juveniles continues to be addressed by the courts.

For example, an Indiana school superintendent recently stated that drug-sniffing dogs are used routinely on weekends in the schools of his district. His hope is that if the dogs find unlawful substances, the student can be prosecuted, and the school system can maintain a safe school environment. He answers criticism of this procedure by

arguing that the end result is better for the common good. What do you think? Is the action of this school superintendent a violation of the prohibition against unreasonable search and seizure in the Indiana and U.S. Constitutions?

As we consider this issue, many questions should arise. Essentially, we are dealing with fundamental questions related to balancing individual rights with the common good, questions that are debated in the highest courts of the state and the nation. Deliberations over the use of locker searches center around the basic issue of an individual's right to be protected against unreasonable search and seizure and a school's obligation to promote the common good by ensuring a quality learning experience. Arguments abound on both sides of the issue.

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## The Arguments Pro and Con

### Some Pro Positions

**Yes, the constitutional protection against unreasonable search or seizure should apply to students in school. School officials cannot conduct unreasonable searches.**

1. Constitutional guarantees protect against "unreasonable" search and seizure. Students have an expectation of privacy in their lockers and, therefore, lockers should be protected against unreasonable search.

Lockers in schools should be considered private, and their contents should be free from unreasonable search and seizure.

A school administrator must have reasonable cause to believe that a student has violated school policy before searching a locker.

Locker searches are fraught with many possibilities for miscarriages of justice.

- Someone else could place illegal substances in a student's locker. Does possession in the locker make the student guilty?
- What if a student had a banned article, such as a World War II knife, in the locker? The knife was to be used for a report in social studies, but was discovered in the locker search. Is the evidence at face value enough to have the student expelled or suspended?

There are many other scenarios in which the fact of possession may not be the complete story. Lockers should be free from the eyes of the public and the hands of the administration.

2. School rules must be reasonable and connected to educational purposes. A random search without reasonable cause does not meet this requirement.

Many schools used to have rules about how students could dress, wear their hair, or wear certain articles of clothing (like hats and sunglasses). School administrators thought that education could not be effective without these rules. They believed the rules were necessary for good discipline of the students and to prevent disruption.

Most of those rules have been withdrawn because they were not related to education or discipline and were vague.

3. Rights are guaranteed to citizens regardless of age.

Since no age specification exists in the constitution, rights apply to all.

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**No, the constitutional protection against unreasonable search or seizure should not apply to students in school. School officials can conduct searches.**

**Some  
Con  
Positions**

1. School officials act *in loco parentis* (Latin for “in the place of parents”), and, therefore, have broad power over student behavior and activities.

This means that the school administrator has the right to search your locker or desk just as your parents can look in your closet at home.

Acting in the place of parents, the school has the right to use whatever reasonable means are available to it to protect children—locker searches, drug-sniffing dogs, whatever means necessary to ensure safety. The educational process must be maintained for the common good.

Specifically related to the school environment is the *Indiana Code* 20-8.1-5, dealing with due process and pupil discipline. Section 2(a) states in part:

Each teacher and any of the other school personnel shall, when pupils are under his charge, have the right to take any action which is then reasonably necessary to carry out, or to prevent an interference with, the educational function of which he is then in charge. . . .

Section 2(b) continues:

Subject to the limitations in section 3 of this chapter, each principal may take any action concerning his school or any school activity within his jurisdiction which is reasonably necessary to carry out or prevent interference with an educational function or school purposes. . . . Similarly, the superintendent, or his administrative staff with his approval, may take any action with respect to all schools within the superintendent’s jurisdiction which is reasonably necessary to carry out or prevent interference with an educational function or school purposes.

Furthermore, under *Indiana Code* 20-8.1-5-4 specifying grounds for expulsion or suspension, Section 4(b)(7) prohibits the student from

Knowingly possessing, using, transmitting, or being under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind. . . .

Section 4(b)(8) continues with additional prohibitions against student activities:

Engaging in the unlawful selling of a controlled substance or engaging in a criminal law violation that constitutes a danger to other students or constitutes an interference with school purposes or an educational function.

As crime has increased in our society, we have likewise seen an increase of crime in our schools. Despite drug-prevention programs in the schools and a nationwide public relations campaign against drug abuse, illegal drugs can still be found in our schools. Society expects our schools to provide a safe, orderly environment. This expectation of school safety was voiced in the National Education Goals, formulated by the nation's governors and the president in 1989. The final goal of the six National Education Goals states:

By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning (National Education Goals Panel, p. 87).

Although drug use is projected to be declining, many students at school face peer pressure to use or purchase drugs. If locker searches are conducted periodically, illegal substances can be found. The fear generated by the potential of discovery in the locker searches will decrease the presence of drugs even more. To reach the goal of a drug-free environment, it may be necessary to use locker searches to root out the offenders. The safety of the community is at stake, and only a few offenders are in question. The balance should be weighted on the side of the many. A locker search is not unreasonable to guarantee public safety.

2. Since special legal distinctions apply to juveniles, rules a school makes to prevent harm to students are reasonable even if individual rights are infringed.

During the last century, special rules were made for juvenile offenders in order to reform them rather than to punish them. Although these special rules were made to protect juveniles, the rules also deny juveniles some of the rights adults have including the legal right to trial by jury.

Some of the rights granted to juveniles are to be cared for and supported, to have free schooling, and to not be neglected or abused.

Some of the rights generally denied juveniles are to drive, vote, work, marry, quit school, execute a will, be held to a contract, loan, or lease, attend x-rated films, rent a car, or leave home. By age 16, juveniles in Indiana gain some of these rights.

Juvenile offenders need to learn the lessons of law and order. If juveniles violate the law, they should be punished. A locker search is a reasonable way to ensure compliance with the law.

3. Schools own the locker or desk; therefore, a student has no right to expect privacy.

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## Bibliography

- Constitution of the United States.
- Constitution of Indiana, *Indiana Code*, Vol. 1, pp. 1-31 (Indianapolis, 1988).
- *Indiana Code* 20-8.1-5.
- National Education Goals Panel, *The National Education Goals Report: Building a Nation of Learners*. (Washington, D.C.: GPO, 1992).

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## Some Relevant Court Cases

- *Schaill by Kross v. Tippecanoe Co. School Corp.*, 864 F. 2d 1309 (7th Cir. 1988).

School system's random urine testing program for interscholastic athletes and cheerleaders was reasonable, despite the fact that it required students to disclose confidential information, including the use of prescription medicine. The testing did not require probable cause or a warrant.

- *Doe v. Renfrow*, 473 F. Supp. 1012 (D. C. Ind. 1979).

Information known by school officials does not have to rise to the level of "probable cause" required by the Fourth Amendment before the school officials can use drug-sniffing dogs. Instead, these dogs can be used so long as the officials have a "reasonable cause to believe" drugs can be found. The dog must be used only to fulfill the school's duty to provide a safe, ordered, and healthy educational environment.

- *Berry v. State*, 561 N.E. 2d 832 (Ind. App. 1990).

It was reasonable for a high school principal to search a student's jacket after a teacher had heard two students arguing about whether the student was selling marijuana.

- *New Jersey v. T.L.O.*, 469 U. S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985).

This case established the "reasonableness" standard (instead of probable cause) as the proper standard for determining the legality of searches conducted by public school officials. School Officials could conduct searches if there were "reasonable grounds" to assume the search would produce evidence.

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## What Do You Think?

1. When can locker searches be justified? When can they not? What should be the basis for a search, reasonableness or probable cause?
2. Should a student have an expectation of privacy with regard to his locker? Why or why not? What about book bags or jackets?
3. Why did our forefathers put the prohibition against unreasonable search and seizure in the U. S. Constitution in 1787?
4. Should the school act *in loco parentis*? Why or why not?
5. If locker searches are conducted, how should the findings from those searches be handled? Should students be allowed to explain the presence of any substance or items, or should it be assumed the student is guilty of wrongdoing with appropriate actions taken?
6. Is the National Education Goal related to a drug-free school environment by the year 2000 a reasonable expectation? Why or why not?
7. Should the rights of juveniles be limited? Why or why not?
8. Where do individual rights end and states' rights begin?

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## Continuing to Explore

1. Explore the history of special legal consideration for juveniles. When did it begin? What was the purpose? How is this concept thought of today?
2. What does the limit on search and seizure spring from historically and philosophically?
3. What was a writ of assistance in England and the American colonies?

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## For More Information

- Franklin, Paula A. *The Fourth Amendment*. New Jersey: Silver Burdett Press, Inc., 1991.  
For the younger student, but valuable for any age.
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- Meltzer, Milton. *The Bill of Rights—How We Got It and What It Means*. New York: Thomas Y. Crowell, 1990.
- "Punishment or Reform? Juvenile Justice in U. S. History," *Scholarship Update*, April 5, 1991, pp. 18-19.